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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,287	07/30/2001	David A. Novais	82869DAN	2414

7590 06/16/2006

Milton S. Sales
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201

EXAMINER

PASIEWICZ, DANIEL M

ART UNIT	PAPER NUMBER
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2622

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/918,287	Applicant(s) NOVAIS ET AL.	
	Examiner Daniel M. Pasiewicz	Art Unit 2622	

--Th MAILING DATE of this communication app ars on the cover sheet with the correspond nce addr ss --

THE REPLY FILED 30 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached correspondence.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed 5/30/2006 have been fully considered but they are not persuasive.
2. The Applicant argues that "two new rejections, as indicated in the Office Action on page 2, are set forth over claims 8-16 under 35 U.S.C. 103(a)" and that there "is no indication in the Office Action that the new rejections were necessitated by Applicants' amendment." Because of this Applicant argues, "the finality of the rejection is improper and should be withdrawn."
3. The Examiner respectfully disagrees as independent claims 8, 10, 12 and 16 clearly have been amended and contain new limitations that change the scope of the claim. As stated in the MPEP 706.07(a): Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). As claims 8, 10, 12 and 16 have been amended and claims 9, 11 and 13-15 depend from the amended claims the finality of the rejection is proper. As the amendment filed 11/23/2005 was a hybrid amendment where a new rejection was provided for claims 8-16 and the old rejection was maintained for claims 1-7, the Examiner inadvertently forgot the form paragraph stating the new rejection was necessitated by Applicant's amendment. Inadvertently forgetting said form paragraph does not make the finality of the rejection improper.

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4. With respect to claim 1-7 the Applicant argues that “the customer in Weston et al. is not in a pre-designated seated location for imaging.” Further arguing that, “Weston et al. clearly describes the system telling a customer, or guest, when in their movements throughout the entertainment event they must pose for a photograph” and “no photographs or images are linked to any predestinated seated location of the customer. Rather the customer must move to predestinated locations provided by the imaging system.” For these reasons the Applicant argues that “Weston et al. does not disclose or suggest every feature of the claimed invention.”

5. The Examiner respectfully disagrees as what the Applicant has pointed out Weston discloses is analogous to the Applicant’s invention. Applicant’s invention as claimed has an ID code including information inputted by the customer on a seating location which is analogous to Weston ID code including information inputted by the customer (their choice of comic book) on a seating location. As the choice of comic book has corresponding pre-determined locations (which are analogous to a seating location) needed to complete the selected comic book, the information of choice of comic book is information of the pre-determined seating locations. Further, the Applicant’s claimed invention has images supplied to the customer of at least the customer at said seating location while viewing the entertainment event. Though no specifically stated in the claim these images are provided in the way of a souvenir. This is analogous to Weston as Weston provides images to the customer of the customer at the pre-determined locations in the form of a souvenir as well, i.e. the comic book. As claimed it is irrelevant that the system of Weston tell a customer when they must pose

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for a photograph, as this does not necessitate they must pose for the photograph at this time. As clearly stated in Weston column 5 lines 34-39 the imaging can happen "at anytime and in any order". Customers are still given analogous options of merely needing to be in the seating location at a time desired by the customer to have there image taken. Thus, as claimed Weston meets all the limitations of the claim as stated in the prior office action.

6. With respect to claims 8-16 Applicant argues that not all limitations of the claims are disclosed by the rejection of claims 8-15 through Blank in view of Gluck in further view of Shniberg and claim 16 through Blank in view of Gluck in further view of Showghi. More specifically that items 1) a customer entering a specific seating location; 2) taking images of both participants in the event and the customer at the entered seating location; 3) selecting an imaging service prior to or during the event; and 4) directing images to be taken of the specified seating location of the customer are not disclosed.

7. First, items 1, 2 and 4 are not specifically claimed in claims 8-16, however it is recognized that the items are directed towards various portions of claims 8-16. Also, the Applicant does not provide any evidence as to how these items are not disclosed by the references. Accordingly, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

8. At best it can be determined that: Item 1 is directed towards claim limitation "entering seating information representative of a seating location of the customer". Item 2 is directed towards "creating images for the customer which includes at least one image of participants at the entertainment event and at least one image of the customer while viewing the entertainment event". And, item 4 is directed towards creating images "of the customer while viewing the entertainment event".

9. From this it is determined that Item 1 corresponds to Claims 8-15, Item 2 corresponds to claims 8-16, Item 3 corresponds to claims 8-15 and Item 4 corresponds to claims 8-16.

10. For claims 8-15 Item 1 is disclosed by Shniberg in paragraph 74 and 75, Item 2 is disclosed by Gluck in column 3 lines 8-11, column 4 lines 4-11 and column 5 lines 11-15, Item 3 is disclosed by Gluck in column 6 line 65 through column 7 line 5 and Item 4 is disclosed by Gluck in column 3 lines 8-11 and column 5 lines 11-15.

11. For claim 16 Item 2 is disclosed by Gluck in column 3 lines 8-11, column 4 lines 4-11 and column 5 lines 11-15 and Item 4 is disclosed by Gluck in column 3 lines 8-11 and column 5 lines 11-15.

12. Thus, items 1-4 are disclosed by the provided references and all the limitations of the claims are taught by the rejection provided in the prior Office Action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel M. Pasiewicz whose telephone number is (571)272-5516. The examiner can normally be reached on M-F 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ngoc Yen Vu can be reached on (571)272-7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DMP
June 7, 2006


NGOCYEN VU
SUPERVISORY PATENT EXAMINER